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EXAMINER	
CHOJNACKI, MELLISSA M	

ART UNIT	PAPER NUMBER
2164	

DATE MAILED: 03/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/079,458	MICKA, WILLIAM FRANK	
	Examiner	Art Unit	
	Mellissa M. Chojnacki	2164	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 December 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11,13-28,30-34,36-46 and 48-56* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11,13-28,30-34,36-46 and 48-56* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

SAM RIMELL
PRIMARY EXAMINER

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Remarks

1. In response to communications filed on December 21, 2005, no claims have been amended, 12, 29, 35 and 47 remain cancelled, no new claims have been added. Therefore claims 1-11,13-28, 30-34, 36-46 and 48-56 are presently pending in the application.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-11,13-28, 30-34, 36-46 and 48-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Milillo et al. (U.S. Patent No. 6,643,671) in view of Crockett et al. (U.S. Patent No. 5,504,861).

As to claim 1, Milillo et al. teaches destaging modified data to a first volume at the primary site for a current database update and updating one or more bits in a first bitmap at the primary site that indicate one or more tracks on the first volume that are to be overwritten with the modified data (See column 2, lines 44-53, lines 58-67); performing a first point in time virtual copy of the modified data of the first volume to a second volume at the primary site by transferring the first bitmap to a second bitmap at

the primary site for indicating the modified data that is to be transmitted to a third volume at the remote site for the current database update (See column 4, lines 47-60; column 8, lines 42-60); and synchronizing the second volume at the primary site with the third volume at the remote site for the current database update by transmitting the modified data of the second volume to the third volume as indicated by the one or more bits in the second bitmap (See column 2, lines 43-67; column 4, lines 47-60), and performing a second point in time virtual copy of the modified data of the third volume to a fourth volume, which is at the remote site (See column 2, lines 7-14; column 3, lines 1-33).

Milillo et al. does not teach a method for synchronously transmitting one or more incremental database updates from a primary site to a remote site, the primary site and the remote site interconnected by at least one communication link.

Crockett et al. teaches remote data duplexing (See abstract), in which he teaches a method for synchronously transmitting one or more incremental database updates from a primary site to a remote site, the primary site and the remote site interconnected by at least one communication link (See abstract, column 5, lines 1-14; column 7, lines 6-20).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention was made to have modified Milillo et al., to include a method for synchronously transmitting one or more incremental database updates from a primary site to a remote site, the primary site and the remote site interconnected by at least one communication link.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Milillo et al., by the teachings of Crockett et al. because a method for synchronously transmitting one or more incremental database updates from a primary site to a remote site, the primary site and the remote site interconnected by at least one communication link would provide a method and apparatus for providing a real time update of data consistent with the data at a primary processing location using minimal control data, wherein the method and apparatus operates independently of a particular application data being recovered, that is, generic storage media based rather than specific application data based (See Crockett et al., column 2, lines 49-55).

As to claims 2, 19 and 37, Milillo et al. as modified, teaches wherein the first bitmap represents a FlashCopy bitmap and the second bitmap represents a peer-to-peer remote copy (PPRC) bitmap (See Milillo et al., column 1, lines 13-20; column 2, lines 44-50, where "FlashCopy" is read on "snapshot").

As to claims 3, 20 and 38, Milillo et al. as modified, teaches wherein the first point in time virtual copy is achieved by flashcopying the modified data of the first volume to the second volume (See Milillo et al., column 2, lines 44-50; column 3, lines 21-30; column 7, lines 66-67; column 8, lines 1-9; column 9, lines 24-34).

As to claims 4, 21 and 39, Milillo et al. as modified, teaches wherein the step of flashcopying initializes the one or more bits in the first bitmap (See Milillo et al., column 2, lines 44-53, where "flashcopying" is read on "snapshot copy"; column 4, lines 47-60).

As to claims 5, 22 and 40, Milillo et al. as modified, teaches wherein the second point in time virtual copy is archived by flashcopying the modified data of the third volume at the fourth volume (See Milillo et al., column 2, lines 44-53, where "flashcopying" is read on "snapshot copy"; column 4, lines 47-60; column 8, lines 29-60).

As to claims 6, 23 and 41, Milillo et al. as modified, teaches further comprising providing an application host that is associated with the first volume for performing the one or more incremental database updates (See Crockett et al., column 5, lines 1-14; also see Milillo et al., column 1, lines 56-67; column 2, lines 1-6); further comprising an application host that is associated with the first volume for performing the one or more incremental database updates (See Crockett et al., column 5, lines 1-14; also see Milillo et al., column 1, lines 56-67; column 2, lines 1-6).

As to claims 7, 24 and 42, Milillo et al. as modified, teaches further comprising a staggering the one or more incremental database updates during the current database update (See Crockett et al., column 5, lines 1-14; also see Milillo et al., column 9, lines

24-47); further comprising a means for staggering the one or more incremental database updates during the current database update (See Crockett et al., column 5, lines 1-14; also see Milillo et al., column 9, lines 24-47).

As to claims 8, 25 and 43, Milillo et al. as modified, teaches wherein staggering comprises:

determining whether a synchronization for a previous database update is complete after the destaging is preformed for the current database update (See Crockett et al., column 5, lines 1-14); and waiting for the synchronization of the previous database update to complete before the performing the first point in time virtual copy for the current database update (See Crockett et al., column 5, lines 1-14; also see Milillo et al., column 1, lines 56-67; column 2, lines 1-6); wherein the means for staggering determines whether a synchronization for a previous database update is complete after the destaging is performed for the current database update (See Crockett et al., column 5, lines 1-14); and waits for the synchronization of the previous database update to complete before the transferring of the first bitmap to the second bitmap for the current database update (See Crockett et al., column 5, lines 1-14; also see Milillo et al., column 1, lines 56-67; column 2, lines 1-6).

As to claims 9, 26 and 44, Milillo et al. as modified, teaches wherein staggering further comprises:

initializing the first bitmap for a next database update after the performing the first point in time virtual copy for the current database update (See Milillo et al., column 2, lines 44-53; column 4, lines 47-60; column 8, lines 42-60, where "flashcopying" is read on "snapshot copying");and waiting for the next database update after the synchronizing for the current database update (See Crockett et al., column 5, lines 1-14); wherein the means for staggering initializes the first bitmap for a next database update after the first means performs the point in time virtual copy for the current database update (See Milillo et al., column 2, lines 44-53; column 4, lines 47-60; column 8, lines 42-60, where "flashcopying" is read on "snapshot copying"); and waits for the next database update after the means for synchronizing synchronizes the second volume with the third volume for the current database update (See Crockett et al., column 5, lines 1-14).

As to claims 10, 27 and 45, Milillo et al. as modified, teaches wherein the synchronizing is achieved by establishing a peer to peer remote copy session between the second volume and the third volume for physically transmitting the modified data of the second volume over the at least one communication link to the third volume (See Crockett et al., column 5, lines 1-14; also see Milillo et al., column 1, lines 35-48, lines 56-67; column 2, lines 1-6); wherein the means for synchronizing establishes a peer to peer remote copy session between the second volume and the third volume for physically transmitting the modified data of the second volume over the at least one communication link to the third volume (See Crockett et al., column 5, lines 1-14; also see Milillo et al., column 1, lines 35-48, lines 56-67; column 2, lines 1-6).

As to claims 11, 28 and 46, Milillo et al. as modified, teaches further comprising a providing a controller at the primary site for managing access to both the first volume and the second volume (See Crockett et al., column 5, lines 1-14; also see Milillo et al., column 3, lines 35-49; column 6, lines 53-67); and providing a controller at the remote site for managing access to the third volume and the fourth volume (See Crockett et al., column 5, lines 1-14; also see Milillo et al., column 3, lines 35-49; column 6, lines 53-67); further comprising means for managing access to both the first volume and the second volume (See Crockett et al., column 5, lines 1-14; also see Milillo et al., column 3, lines 35-49; column 6, lines 53-67); and means for managing access to the third volume and the forth volume (See Crockett et al., column 5, lines 1-14; also see Milillo et al., column 3, lines 35-49; column 6, lines 53-67).

As to claims 13, 30 and 48, Milillo et al. as modified, teaches further comprising:

initializing the first bitmap to indicate that all data on the first volume is to be copied to the second volume and all data that is copied to the second volume is to be copied to the third volume (See Milillo et al., column 2, lines 44-53, lines 58-63; column 4, lines 47-60; column 8, lines 42-60); further comprising:

means for initializing the first bitmap to indicate that all data of the first volume is to be copied to the second volume and all data that is copied to the second volume is to be copied to the third volume (See Milillo et al., column 2, lines 44-53, lines 58-63; column 4, lines 47-60; column 8, lines 42-60);

As to claims 14, 31 and 49, Milillo et al. as modified, teaches further comprising providing a recovery host that is associated with the forth volume for recovering from a failure of the primary site by providing access to the forth volume (See Milillo et al., column 8, lines 42-67, where "recovery host" is read on "recovery operation"; column 10, lines 38-54).

As to claims 15, 32 and 50, Milillo et al. as modified, teaches further comprising automatically initiating the incremental database updates (See Milillo et al., column 15, lines 20-23); the system further comprising a means for automatically initiating the incremental database updates (See Milillo et al., column 15, lines 20-23).

As to claims 16, 33 and 51, Milillo et al. as modified, teaches wherein destaging further comprises:

inspecting the one or more bits of the first bitmap at the primary site to determine whether the second volume includes data of the one or more tracks on the first volume that are to be overwritten with the modified data (See Milillo et al., column 2, lines 44-53, lines 58-67); and performing a point in time virtual copy from the first volume to the second volume of the data of the one or more tracks on the first volume that are to be overwritten with the modified data if the first bitmap indicates that the second volume does not include the data of the one or more tracks on the first volume that are to be

overwritten with the modified data (See Milillo et al., column 2, lines 44-53; column 4, lines 47-60); wherein the means for destaging further compromises:

means for inspecting the one or more bits of the first bitmap at the primary site to determine whether the second volume includes data of the one or more tracks on the first volume that are to be overwritten with the modified data (See Milillo et al., column 2, lines 44-53, lines 58-67); and means for performing a point in time virtual copy from the first volume to the second volume of the data of the one or more tracks on the first volume that are to be overwritten with the modified data if the first bitmap indicates that the second volume does not include the data of the one or more tracks on the first volume that are to be overwritten with the modified data (See Milillo et al., column 2, lines 44-53; column 4, lines 47-60).

As to claims 17, 34 and 52, Milillo et al. as modified, teaches wherein the at least one communication link is comprises at least one of a channel link; a T1/T3 link; a Fibre channel; and an ESCON link (See Crockett et al., column 7, lines 6-20).

As to claim 18, Milillo et al. teaches a means for destaging modified data to a first volume at the primary site for a current database update and updating one or more bits in a first bitmap at the primary site that indicate one or more tracks on the first volume that are to be overwritten with the modified data (See column 2, lines 44-53, lines 58-67); first means for performing a first point in time virtual copy of the modified data of the first volume to a second volume at the primary site by transferring the first bitmap to a

second bitmap at the primary site for indicating the modified data that is to be transmitted to a third volume which is at the remote site for the current database update (See column 4, lines 47-60; column 8, lines 42-60); and means for synchronizing the second volume with the third volume for the current database update by transmitting the modified data of the second volume to the third volume as indicated by the one or more bits in the second bitmap (See column 2, lines 43-67; column 4, lines 47-60), and performing a second point in time virtual copy of the modified data of the third volume to a fourth volume, which is at the remote site (See column 2, lines 7-14; column 3, lines 1-33).

Milillo et al. does not teach a system for asynchronously transmitting one or more incremental database updates from a primary site to a remote site, the primary site and the remote site interconnected by at least one communication link.

Crockett et al. teaches remote data duplexing (See abstract), in which he teaches a system for asynchronously transmitting one or more incremental database updates from a primary site to a remote site, the primary site and the remote site interconnected by at least one communication link (See abstract, column 2, lines 63-66; column 5, lines 15-29; column 7, lines 6-20).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention was made to have modified Milillo et al., to include a system for asynchronously transmitting one or more incremental database updates from a primary site to a remote site, the primary site and the remote site interconnected by at least one communication link.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Milillo et al., by the teachings of Crockett et al., because a system for asynchronously transmitting one or more incremental database updates from a primary site to a remote site, the primary site and the remote site interconnected by at least one communication link would provide a method and apparatus for providing a real time update of data consistent with the data at a primary processing location using minimal control data, wherein the method and apparatus operates independently of a particular application data being recovered, that is, generic storage media based rather than specific application data based (See Crockett et al., column 2, lines 49-55).

As to claim 36, Milillo et al. teaches (a) destaging modified data to a first volume at the primary site for a current database update and updating one or more bits in a first bitmap at the primary site that indicate one or more tracks on the first volume that are to be overwritten with the modified data (See column 2, lines 44-53, lines 58-67);

(b) performing a first point in time virtual copy of the modified data of the first volume to a second volume at the primary site by transferring the first bitmap to a second bitmap at the primary site for indicating the modified data that is to be transmitted to a third volume at the remote site for the current database update (See column 4, lines 47-60; column 8, lines 42-60); and

(c) synchronizing the second volume at the primary site with the third volume at the remote site for the current database update by transmitting the modified data of the

second volume to the third volume as indicated by the one or more bits in the second bitmap (See column 2, lines 43-67; column 4, lines 47-60), and

(d) performing a second point in time virtual copy of the modified data of the third volume to a fourth volume, which is at the remote site (See column 2, lines 7-14; column 3, lines 1-33).

Milillo et al. does not teach a program storage device, tangibly embodying a program of instructions executable by a machine to perform a method for asynchronously transmitting one or more incremental database updates from a primary site to a remote site, the primary site and the remote site interconnected by at least one communication link.

Crockett et al. teaches remote data duplexing (See abstract), in which he teaches a program storage device, tangibly embodying a program of instructions executable by a machine to perform a method for asynchronously transmitting one or more incremental database updates from a primary site to a remote site, the primary site and the remote site interconnected by at least one communication link (See abstract, column 5, lines 1-29; column 7, lines 6-20).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention was made to have modified Milillo et al., to include a program storage device, tangibly embodying a program of instructions executable by a machine to perform a method for asynchronously transmitting one or more incremental database updates from a primary site to a remote site, the primary site and the remote site interconnected by at least one communication link.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Milillo et al., by the teachings of Crockett et al., because a program storage device, tangibly embodying a program of instructions executable by a machine to perform a method for asynchronously transmitting one or more incremental database updates from a primary site to a remote site, the primary site and the remote site interconnected by at least one communication link would provide a method and apparatus for providing a real time update of data consistent with the data at a primary processing location using minimal control data, wherein the method and apparatus operates independently of a particular application data being recovered, that is, generic storage media based rather than specific application data based (See Crockett et al., column 2, lines 49-55).

As to claims 53-55, Milillo et al., as modified, teaches wherein during the synchronizing, the first volume is accessible to a host at the primary site, and the four volume is accessible to a host at the remote site (See Crockett et al., abstract; column 5, lines 1-14; also see Milillo et al., column 1, lines 56-67; column 2, lines 1-6).

As to claim 56, Milillo et al., teaches a method for backing up data from a primary site to a remote site (See column 2, lines 31-42) comprising;

(a) destaging modified data to a first volume at the primary site for a current database update (See column 2, lines 44-53, lines 58-67);

(b) performing a first point in volume virtual copy of the modified data of the first volume to a second volume at the primary site (See column 4, lines 47-60; column 8, lines 42-60); and

(c) synchronizing the second volume with a third volume at the remote site by transmitting the modified data of the second volume to the third volume (See column 2, lines 43-67; column 4, lines 47-60), and

(d) after completion of the synchronizing, performing a second point in time virtual copy of the modified data of the third volume to a fourth volume at the remote site (See column 2, lines 7-14; column 3, lines 1-33);

Milillo et al. does not teach a system for asynchronously transmitting one or more incremental database updates from a primary site to a remote site, the primary site and the remote site interconnected by at least one communication link.

Crockett et al. teaches remote data duplexing (See abstract), in which he teaches wherein during the synchronizing, the first volume is accessible to a host at the primary site, and the fourth volume is accessible to a host at the remote site (See abstract; column 5, lines 1-14; column 7, lines 6-20).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention was made to have modified Milillo et al., to include a system for asynchronously transmitting one or more incremental database updates from a primary site to a remote site, the primary site and the remote site interconnected by at least one communication link.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Milillo et al., by the teachings of Crockett et al. because a system for asynchronously transmitting one or more incremental database updates from a primary site to a remote site, the primary site and the remote site interconnected by at least one communication link would provide a method and apparatus for providing a real time update of data consistent with the data at a primary processing location using minimal control data, wherein the method and apparatus operates independently of a particular application data being recovered, that is, generic storage media based rather than specific application data based (See Crockett et al., column 2, lines 49-55).

Response to Arguments

4. Applicant's arguments filed on December 21, 2005, with respect to the rejected claims in view of the cited references have been considered but are moot in view of applicant's amended claims necessitate new ground(s) of rejection.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mellissa M. Chojnacki whose telephone number is (571) 272-4076. The examiner can normally be reached on 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Rones can be reached on (571) 272-4085. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 20, 2006
MMC

SAM RIMELL
PRIMARY EXAMINER